APPENDIX

APPENDIX

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DUVAL COUNTY, FLORIDA

NO. 69-8108 Div. C.

[STYLE OMITTED]

VERDICT

We, the jury, find for the Plaintiff William P. Jackson, and against the Defendant, Seaboard Coast Line Rail-Road Company, a Virginia corporation, and assess his damages in the amount of $325,000.00.

So say we all.

June 19, 1970

Date

/s/ Forrest M. Howell

Foreman

IN THE CIRCUIT COURT IN AND FOR DUVAL COUNTY, FOURTH JUDICIAL CIRCUIT OF FLORIDA. DIVISION "C".

CIVIL ACTION NO. 69-8108

[STYLE OMITTED]

ORDER DENYING MOTION FOR NEW TRIAL, ETC.

This cause came on for hearing on the Motions hereinafter disposed of and was argued by counsel for the respective parties.

The Court is of the opinion that the Verdict is based solely on the Boiler Inspection Act Count of the Amended Complaint (Count II); that there is evidence to support the Verdict as to that Count, and that there was no error at the trial which requires the setting aside of the Verdict and the granting of a new trial as to said Count II.

However, the Court is of the opinion that as to Count I, the Verdict is against the manifest weight of the evidence, and "is so grossly excessive as to shock the judicial conscience", because the negligent acts of the plaintiff were the primary legal causes of his injuries, and that plaintiff's negligence was so great that the Verdict should not be allowed to stand. Except for the fact that it would accomplish nothing, the "Motion for New Trial" would be granted on grounds 2, 3, and 4 thereof, or a Remittitur

of $225,000.00 ordered on grounds 5, 6, 10, 11 and 12 of the Motion for Remittitur.

Upon consideration, it is

ORDERED AND ADJUDGED:

1. The Motion for Judgment is denied.

2. The Motion for New Trial is denied.

3. The Motion for Remittitur is denied.

DONE and ORDERED in Chambers at Jacksonville, Florida, this 20th day of July, A.D. 1970.

(s) JOHN M. McNATT

Circuit Judge

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JULY TERM, A. D. 1971

CASE NO. 0-36

[STYLE OMITTED]

Opinion filed December 23, 1971.

An Appeal from the Circuit Court for Duval County. John M. McNatt, Judge.

Bolles, Goodwin, Ryskamp & Ware, for Appellant.

James H. Nance; Beckham & McAliley; and Horton & Schwartz, for Appellee.

RAWLS, Acting Chief Judge.

Appellee-plaintiff Jackson sued the Railroad seeking damages under the Federal Employers Liability Act.[1] Count I of Jackson's amended complaint alleged that the Railroad had been negligent in several enumerated particulars. Count II claimed a violation of the Boiler Inspection Act[2] which imposes absolute liability upon a railroad to an injured employee when it fails to keep " . . . any locomotive . . . and all parts and appurtenances thereof . . . in proper condition and safe to operate in the service to which the

[1]FELA, 45 U.S.C.A. § 51 et seq.

[2]Boiler Inspection Act, 45 U.S.C.A. § 22.

same are put, that the same may be employed in the active service of such carrier without unnecessary peril to life or limb . . . " Trial was had and an adverse final judgment to the Railroad was entered, pursuant to a jury verdict, in the sum of $325,000.00. Hence, this appeal.

The crux of the Railroad's primary point on appeal is whether a radio installed in a locomotive by the Railroad for the purpose of providing two-way communication between the engine and yard employees is an appurtenance within the meaning of the Boiler Inspection Act.

On the occasion of this tragic accident, plaintiff Jackson was working as a switchman in the Baldwin yards of defendant Railroad. His employment encompassed the throwing of switches in channeling railroad cars to a specific sidetrack. In order to direct the engineer and others in the work crew, Jackson gave signals either by hand, lantern or radio. At about 8:00 p.m. on the night of the accident the switching crew composed of Jackson, the conductor, field switchman and the engineer was moving a cut of cars in the Baldwin yard from the main lead track onto the No. 19 track. To accomplish the move it was necessary for Jackson to throw the No. 3 switch and then throw the No. 19 switch. Signals given to effectuate the movement were transmitted by Jackson's portable radio. Jackson erroneously threw a switch which put the cut of cars on the wrong track. After erroneously throwing the switch, Jackson called to the engineer on his radio advising him to move the train by saying, "Come ahead." The field switchman testified that he heard Jackson's transmission on his portable radio and he was fearful that the engineer did not receive Jackson's signal. For this rea-

son he relayed the signal to the engineer on his radio. The movement was initiated and Jackson was struck by the cut of cars severing both his legs.

Evidence adduced most favorable to Jackson's position is as follows: Engine radios have been standard railroad equipment for a number of years and have been used by the defendant Railroad since 1955; Jackson's transmission to the engineer to "Come ahead" was not received by the engineer on the engine radio receiver; the engineer violated safety rules in moving the train without being in constant communication on the radio or without a signal from Jackson; Jackson's transmission was not heard by the engineer because of some defect in the sensitivity of the receiver installed on the engine; the Railroad took no steps to increase the sensitivity of the receiver in accordance with the manufacturer's recommendations; and had the engineer received Jackson's transmission, Jackson would not have been injured because the sole reason for leaving his place of safety was to walk across the tracks to give a lantern signal which would be visible to the engineer to start the movement.

The Railroad contends that at the conclusion of plaintiff's case its motion for directed verdict should have been granted because: (1) an engine radio is not an appurtenance under the Boiler Inspection Act; (2) plaintiff failed to establish any evidence of a defective condition in the engine radio; and (3) assuming the failure of the engine radio, it was not the proximate cause of the plaintiff's injuries.

The Boiler Inspection Act[3] provides in part: "It shall

[3]Boiler Inspection Act, 45 U.S.C.A. § 23.

be unlawful for any carrier to use or permit to be used on its line any locomotive unless said locomotive, its boiler, tender, and all parts and *appurtenances* thereof are in proper condition and safe to operate . . . " (Emphasis supplied.)

Although the Railroad concedes that a radio was installed on the locomotive, it strenuously argues same is not an appurtenance within the meaning of the Boiler Inspection Act. The Railroad cites Southern Railway Co. v. Lunsford[4] as the leading case on this point. There, the Supreme Court was confronted with an experimental device called "Wright's Little Watchman", and in holding same was not an appurtenance stated:

> "With reason, it cannot be said that Congress intended that every gadget placed upon a locomotive by a carrier, for experimental purposes, should become part thereof within the rule of absolute liability. So to hold would hinder commendable efforts to better conditions and tend to defeat the evident purpose — avoidance of unnecessary peril to life or limb. Whatever in fact is an integral or essential part of a completed locomotive, and all parts or attachments definitely prescribed by lawful order of the Interstate Commerce Commission, are within the statute. But mere experimental devices which do not increase the peril, but may prove helpful in an emergency, are not."

---

[4]Southern Railway Co. v. Lunsford, 297 U.S. 398, 56 S.Ct. 504, 80 L.Ed. 740 (1936).

The Railroad then reasons that the engine radio was not essential to the operation of a yard locomotive since movement of railroad cars had been conducted earlier on the evening of the accident by means of hand signals. Further, since there was no evidence that the Interstate Commerce Commission had promulgated any rules governing the use of a radio on a locomotive, the Boiler Inspection Act does not apply to this device.

In the case of Southern Railway Company v. Bryan[5] the Fifth Circuit Court of Appeals in construing the Boiler Inspection Act stated:

> " . . . All of the federal safety laws in Chapter 1, Title 45, U.S.C., are in pari materia and must be liberally construed in connection with the federal remedy provided in Chapter 2 of such title to carry out their remedial and humanitarian purposes."

And in Fritts v. Toledo Terminal R. Co.[6] the federal Supreme Court held that the seat upon which the engineer sat while operating a locomotive was a "part and appurtenance" of the engine, the defective condition of which would impose absolute responsibility upon the railroad.

This record reveals that such radios have been utilized by the railroad industry for a number of years to facilitate the movement of cars in switching and yard operations. We hold that the engine radio here considered was clearly

---

[5]Southern Railway Company v. Bryan, 375 F.2d 155 (5 Cir. 1967).

[6]Fritts v. Toledo Terminal R. Co., 293 F.2d 361 (6 Cir. 1961).

a "part and appurtenance" as within the meaning of the Boiler Inspection Act.

We next consider appellant's assertion that the plaintiff failed to establish any evidence of a defective condition in the engine radio. Competent testimony was adduced and presented to the jury by plaintiff as to the defective condition of the engine radio. The trial judge was correct in denying the Railroad's motion for a directed verdict and properly submitted the conflicting evidence to the jury. As to the Railroad's contention that the failure of the radio was not the proximate cause of Jackson's injury, we observe that the evidence is undisputed that had Jackson's transmission been received by the engineer, Jackson would not have left his place of safety.[7]

Being of the opinion that the Boiler Inspection Act is applicable, it is unnecessary to consider the point asserted by the Railroad going to Count I of plaintiff's complaint under the Federal Employers Liability Act.

The judgment appealed is affirmed.

JOHNSON, J., and McLANE, RALPH M., Associate Judge, CONCUR.

---

[7]See Coray v. Southern Pacific Co., 335 U.S. 520, 69 S.Ct. 275, 93 L.Ed. 208, 210 (1949), stating:

> "Liability of a railroad under the Safety Appliance Act for injuries inflicted as a result of the Act's violation follows from the unlawful use of prohibited defective equipment 'not from the position the employee may be in or the work which he may be doing at the moment when he is injured.'"

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JANUARY TERM, A.D. 1972

CASE NO. 0-36

[STYLE OMITTED]

ORDER

Petition for rehearing having been considered,
IT IS ORDERED that the petition is hereby denied.

WITNESS the Honorable John S. Rawls, Acting Chief Judge, and Seal of the Court this 7th day of Febraury, A.D. 1972.

/s/ Raymond E. Rhodes

Clerk

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1972
TUESDAY, APRIL 25, 1972

CASE NO. 42,095

[STYLE OMITTED]

DISTRICT COURT OF APPEAL, FIRST DISTRICT

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5c(6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ROBERTS, C. J., ERVIN, BOYD, McCAIN and DEKLE, J.J., concur.

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1972
WEDNESDAY, MAY 31, 1972

Case No. 42,095

[STYLE OMITTED]

On consideration of the Petition for Rehearing filed by attorneys for Petitioner,

IT IS ORDERED by the Court that said Petition be, and the same is hereby, denied.

ROBERTS, C. J., ERVIN, BOYD,
McCAIN and DEKLE, J.J., Concur

APPENDIX 7

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR DUVAL COUNTY

CIVIL CASE NO. 69-8108 (Div. "C")

[STYLE OMITTED]

MOTION FOR JUDGMENT IN ACCORDANCE WITH DEFENDANT'S MOTIONS FOR DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT

COMES NOW the Defendant, by and through its undersigned attorneys, and moves the Court to set aside the verdict of the jury dated June 19, 1970, in the sum of $325,000.00 and the Final Judgment for Plaintiff and against Defendant entered upon said jury verdict, and to have Judgment entered for this Defendant and against the Plaintiff notwithstanding the verdict of the jury and in accordance with the Defendant's Motions for Directed Verdict made at the close of the Plaintiff's case and made at the close of all of the evidence, on each and/or any of the grounds, separately and severally, set forth and urged in support of the Defendant's Motions for Directed Verdict above referred to, and on the following additional grounds:

1. There was no evidence adduced of any violation of the Boiler Inspection Act on the part of this Defendant which would warrant the submission of that issue to the jury.

2. There was no evidence adduced to show that the Boiler Inspection Act applied in this case, nor any evidance showing that the Boiler Inspection Act or the regulations promulgated pursuant thereto made an engine radio a part, appurtenance, or appliance which was covered by the Boiler Inspection Act.

3. There was no evidence adduced of any violation of the Boiler Inspection Act which caused or contributed to cause, in whole or in part, the injuries and damages to the Plaintiff.

(remainder of motion omitted)

DATED: June 25, 1970